

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

ORIGINAL

74-2426

(41,867)

To be argued by
MURRAY L. LEWIS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CARRIE L. HAZZARD,
Plaintiff-Appellant,

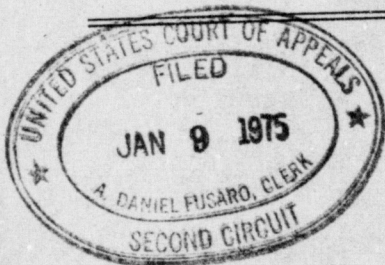
v.

CASPAR WEINBERGER, SEYMOUR FIER, BRENDAN BYRNES,
WILLIAM F. HYLAND, WILLIAM T. SOMMERS, H. A. Mc-
GOWAN, JAMES A. ALLOWAY, JOHN A. McGARRITY, JOHN
J. SPEILBERGER, MALCOLM WILSON, LOUIS J. LEFKOWITZ,
ALBERT D'ANTONI, ROBERT F. BARRECA, FRANK MOR-
GANO, JOSEPH V. TERRENZIO, DR. E. A. STERN, MARTIN
WALTERS, DONALD ALEXANDER, ABRAHAM BEAME,
JULES M. SUGARMAN, MARTTIE LOUIS THOMPSON,
ROBERT FILLER, W. D. ULLRICH, individually and in their
official capacities,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLEES', ABRAHAM BEAME, JOSEPH TERRENZIO,
JULIE M. SUGARMAN and DR. E. A. STERN, BRIEF



ADRIAN P. BURKE,
Corporation Counsel,
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Joseph Terrenzio, Julie M.
Sugarman and Dr. E. A. Stern,
Municipal Building,
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566-5965

L. KEVIN SHERIDAN,
MURRAY L. LEWIS,
Of Counsel.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 74-2426

CARRIE L. HAZZARD,
Plaintiff-Appellant,
v.

CASPAR WEINBERGER, SEYMOUR FIER, BRENDAN BYRNES,
WILLIAM F. HYLAND, WILLIAM T. SOMMERS, H. A.
MCGOWAN, JAMES A. ALLOWAY, JOHN A. MCGARRITY,
JOHN J. SPEILBERGER, MALCOLM WILSON, LOUIS J.
LEFKOWITZ, ALBERT D'ANTONI, ROBERT F. BARRECA,
FRANK MORGANO, JOSEPH V. TERRENZIO, DR. E. A. STERN,
MARTIN WALTERS, DONALD ALEXANDER, ABRAHAM BEAME,
JULES M. SUGARMAN, MARTTIE LOUIS THOMPSON, ROBERT
FILLER, W. D. ULLRICH, individually and in their official
capacities,

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**APPELLEES', ABRAHAM BEAME, JOSEPH TERRENZIO,
JULIE M. SUGARMAN AND DR. E. A. STERN, BRIEF**

Statement

In a pot-pourri complaint plaintiff, a resident of New York State, seemingly alleges that defendants, Abraham Beame, Joseph Terrenzio, Julie M. Sugarman and Dr. E. A. Stern, all residents of the State of New York, conspired together to withhold from plaintiff information of purported physical injuries of which plaintiff was suffering. The complaint also alleges, seemingly against co-defendants, that plaintiff has been denied social security benefits, workmen's compensation and pension rights stemming from her husband's demise.

The United States District Court for the Southern District of New York (POLLACK, J.) said that "there are no allegations in the complaint that any of these defendants [above-named] committed any acts under color of state law" and held that the Court lacked jurisdiction (opinion, pp. 10-11). The Court dismissed the complaint.

The Court below was under an obligation to determine if it had jurisdiction. *State of Alabama ex rel. Baxley v. Woody*, 473 F. 2nd 10 (5th Cir. 1973). Plaintiff was under an obligation to plead and prove facts necessary to show federal jurisdiction, *Mas v. Perry*, 489 F. 2nd 1396 (5th Cir. 1974); *Nieves v. Stamford Hospital*, 345 F. Supp. 1014 (D. C. Conn., 1972), but failed to so do. In this case where no federal question has been pleaded and diversity does not exist the complaint was correctly dismissed (cf. *Mas v. Perry*, *supra*).

Respectfully submitted,

January 9, 1975

ADRIAN P. BURKE,
Corporation Counsel,
Attorney for Appellees
Abraham Beame, Joseph
Terrenzio, Julie M.
Sugarman and Dr.
E. A. Stern.

L. KEVIN SHERIDAN,
MURRAY L. LEWIS,
of Counsel.

(5001)

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

Carlos M Rodriguez being duly sworn, says that on the 9 day
of Jan 1975, he served the annexed Appellee's upon
Currie R Huzzard Esq., the attorney for the Plaintiff Respondent
herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and
Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the
United States in said city directed to the said attorney at No. 15 St James Place in the
Borough of Man, City of New York, being the address within the State theretofore designated by
him for that purpose.

Sworn to before me, this

9 day of Jan

Edward S Schubert

EDWARD S. SCHUBERT
Notary Public, State of New York
No. 03-556155
Qualified in Bronx County
Commission Expires March 30, 1979

Carlos M Rodriguez